COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O. 358/2004

United India Insurance Company Ltd.
Through its Divisional Manager
Divisional Officer, Haldwani, Nainital Road,
District Nainital … **Appellant**

VERSUS

1- Smt. Santosh Kumari
W/o Late Shri Todal Singh
2- Km. Deepa Rani
D/o Late Shri Todal Singh
3- Rajeev Kumar
S/o Late Shri Todal Singh
4- Kamal Kumar
S/o Late Shri Todal Singh
All above R/o Mohalla Rahamkhani, Kasba
Sultanpur, Patti and Distt Udham Singh Nagar
5- Smt. Mamta Sharma
W/o Shri Avdesh Sharma
R/o Mishra Garden, Kankhal, Haridwar Distt. Haridwar
…. **Respondents**

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Date: September 24, 2004

Admit.

This is an appeal by the Insurance Company against the award dated 25.06.2004 passed by the Motor Accident Claims Tribunal/Additional District Judge, FTC, Kashipur in Motor

Accident Claim Case No. 101/2002, Smt. Sanosh Kumari & Others V/s Smt. Mamta Sharma and another, by which the Motor Accident Claims Tribunal ha awarded Rs.8,61,752/- as compensation under Section-166 of the Motor Vehicles Act, 1988 (in short the Act) to the claimants. The aforesaid claim was preferred by the claimants/respondents on which the notice was issued to the insured (owner) and insurer. The owner has filed an objection and has led the evidence and has also contested the case seriously.

The Motor Accident Claims Tribunal has discussed the evidence led by the insured and has, after appreciating the evidence adduced by the owner made the award.

The Insurance Company has moved an application before the Motor Accident Claims Tribunal concerned on 12.11.2003. The contents of the application under Section-170 of the Act are that the Opposite Party No.1- the insured, had field W.S. and if he does not contest the claim to prove the genuineness of the policy and not having bear the collusion with the claimant and as such failed to contest the claim. Opposite Party No.2-Appellant have a right to contest the claim on all the grounds to defend the case in its interest.

A perusal of application shows that contents of the application are vague and there is no definite allegation of collusion and not contesting the case by the insured owner. The use of “if” in the first para of the application itself shows the indefinite sate of affairs. However, this application was allowed but the Motor Accident Claims Tribunal on the same day passed on order “permitted”. There

is no evidence by the Insurance Company regarding the genuineness of the policy, therefore, now the appellant merely on the ground that application under Section-170 was allowed cannot be allowed to raise all grounds other than provided which are available to owner. Section- 170 clearly provides that all the grounds shall be available to insurer only in case collusion is proved or the case has not been contested by the insured. Here in the present case, no collusion was proved and the insurer has seriously contested the case on all the grounds. Therefore, all the grounds of the appeal to contest on merit are not available to the insurer. No ground is available to the appellant under Section-149 (2) of the Motor Vehicles Act on appreciation of evidence on record.

Therefore, appeal is devoid of merit and is hereby dismissed. No order as to costs.

The amount, if deposited, with this Court be remitted to the Motor Accident Claims Tribunal concerned. The Tribunal shall inform the claimant to withdraw the amount of award, if any.

(B.S. Verma, J.) **(P.C. Verma, J.)**

Rajeev Dang